

May 20, 2004

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**2004 Opinion No. 64**

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Docket No. 29085/29087
	)	
REGINA BICKNELL,	)	
	)	
Defendant-Respondent.	)	
	)	
STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
SHAUN MICHAEL MERCER,	)	
	)	
Defendant-Respondent.	)	
	)	

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Appeals from the District Court of the First Judicial District of the State of Idaho, in and for Kootenai County. Hon. John P. Luster, District Judge.

The orders of the district court are reversed and these cases are remanded for further proceedings.

Hon. Lawrence G. Wasden, Attorney General, Boise, for appellant. Kenneth K. Jorgensen argued.

Molly J. Huskey, State Appellate Public Defender, Boise, for respondent Regina Bicknell. Ms. Huskey argued.

Redal and Redal, Coeur d'Alene, for respondent Shaun Mercer.

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In a majority opinion released today, the Idaho Supreme Court reversed the orders of the district court and remanded these cases for further proceedings.

These cases involve appeals from orders suppressing evidence obtained pursuant to a search warrant on the ground that the search warrant was invalid because it was based upon an affidavit of a Washington State Patrol Detective that had been notarized by a notary public rather than signed in front of the magistrate judge.

On March 15, 2002, a Rathdrum police officer appeared before a magistrate judge seeking a search warrant for evidence related to the crime of automobile theft. In connection with the application for a search warrant, the officer presented the magistrate with the affidavit of a Washington State Patrol Detective that had been notarized by an Idaho notary public.

On March 19, 2002, several law enforcement officers executed the search warrant on the residence. During the search, they observed controlled substances and other items associated with controlled substances, as well as a shotgun and a pistol. They also found Bicknell and Mercer in the bedroom of the house. Mercer, a convicted felon, could not legally possess firearms.

Based upon the observations made during the search, the Rathdrum officer returned to the magistrate seeking a second search warrant to seize evidence of the manufacturing, sale, or possession of controlled substances and the illegal possession of firearms. The magistrate issued the search warrant, which the officers executed the same day. On March 20, 2002, the State charged Bicknell and Mercer in separate complaints with trafficking in methamphetamine or amphetamine, a felony.

Bicknell and Mercer each filed motions to suppress on the ground that the affidavit of the Washington detective, which was the basis for issuing the first search warrant, had not been sworn to before a judge. They argued that because the first search warrant was invalid, the second search warrant was also invalid since it was issued based upon evidence discovered when the first search warrant was executed. The district court entered orders in each case suppressing the evidence, holding that the affidavit of the Washington detective did not comply with Idaho Criminal Rule 41(c) because it was notarized by a notary public rather than executed before a judge and that the search warrant was therefore invalid.

The State filed a motion in each case seeking approval from the district court for an interlocutory appeal of the orders suppressing evidence. The district court gave that approval. Then the State filed motions in this Court under Idaho Appellate Rule 12 seeking permission to appeal the orders granting the motions to suppress, and the Supreme Court granted that permission. On that same day the State filed its notice of appeal in each case. Both cases were later consolidated for the appeal.

In a majority opinion released today, the Idaho Supreme Court held that the defendants have not shown how the alleged procedural error in the issuance of the search warrant impacted any of their substantive rights. Therefore the orders granting the motions to suppress are reversed and these cases are remanded for further proceedings.